

A T T O R N E Y S

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2 Defendants Deutsche Bank National Trust Company, as Trustee (“Deutsche
3 Bank”); JPMorgan Chase Bank, N.A., as an acquirer of certain assets and liabilities of
4 Washington Mutual Bank, F.A. from the FDIC, acting as receiver (“Chase”); and
5 California Reconveyance Company (“CRC”) (collectively, the “Defendants”), by and
6 through their undersigned counsel, hereby submit this reply in support of Defendants’
7 motion for judgment on the pleadings (“Motion for Judgment”) and motion to expunge
8 lis pendens (“Motion to Expunge”).
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10 MEMORANDUM OF POINTS AND AUTHORITIES

11 I. INTRODUCTION

12 Defendants’ Motion for Judgment dispelled each of Plaintiff’s claims for relief
13 and requested that this action – which seeks to relitigate claims that were rejected by this
14 Court on two prior occasions – be dismissed with prejudice. In his Opposition, Plaintiff
15 fails to respond to any of the points and authorities in the Motion for Judgment. Instead,
16 in conclusory manner, Plaintiff’s Opposition makes the unfounded assertions that he has
17 stated viable claims pursuant to the notice pleading standard of Fed.R.Civ.P. 8, and that,
18 to the extent he had not done so, he should be granted leave to amend his Complaint.
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20 For the reasons set forth herein, and in the Motion for Judgment, none of
21 Plaintiff’s claims for relief is sustainable even under a notice pleading standard.
22 Moreover, Plaintiff’s last ditch request to amend, unaccompanied by any explanation
23 how an amendment would cure his deficient complaint, should be squarely rejected.
24 Plaintiff’s judicial gamesmanship of filing multiple lawsuits regarding the same loan and
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property, in spite of this Court's repeated rejection and dismissal of his claims, must be stopped.

**II. PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE,
AS SET FORTH IN THE MOTION FOR JUDGMENT,
NONE OF PLAINTIFF'S CLAIMS FOR RELIEF HAS ANY MERIT**

Plaintiff's Complaint asserts the following claims for relief: (1) quiet title; (2) deceptive trade practices; (3) wrongful foreclosure; (4) conspiracy to commit wrongful conversion; (5) statutorily defective foreclosure; (6) broken chain of custody of the promissory note; (7) wrongful filing of unlawful detainer; (8) injunctive relief; (9) declaratory relief; and (10) rescission/cancellation of deed of trust. As set forth in the Motion for Judgment, and briefly reiterated below, Plaintiff's Complaint should be dismissed because it is procedurally improper and because each of Plaintiff's claims for relief fails as a matter of law. (*See* Motion for Judgment, pp. 6-24.)

(1) Plaintiff's Complaint Should Be Dismissed Because It Is Procedurally Improper

This lawsuit is the **third** action that Plaintiff has filed related to the subject loan and property. His first and second lawsuits were each dismissed in their entirety. Upon being noticed of the adverse rulings in the first and second lawsuits, Plaintiff took no action to challenge the Court's rulings. For instance, he failed to file a motion to alter or amend judgment or seek leave to amend his complaint in either lawsuit. Instead, two weeks after the Court dismissed Plaintiff's second lawsuit, Plaintiff filed this third action in state court in a clear attempt to relitigate the same claims and allegations that this Court unequivocally rejected in the first and second lawsuits. The claims are over, and they cannot be relitigated here – in a separate action. Thus, this Complaint should be dismissed. (*Id.*, pp. 6-7.)

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2 Plaintiff's Complaint should also be dismissed as a matter of law because none of
3 Plaintiff's claims for relief is sustainable, even under a notice pleading standard. (*Id.*, pp.
4 7-8.)

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6 (2) Plaintiff's Quiet Title Claim Is Unsustainable

7 Plaintiff's quiet title claim is unsustainable for multiple reasons. First, Plaintiff
8 cannot overcome the presumption in favor of the record titleholder, and he has not
9 presented any cogent argument justifying a quiet title determination in his favor. Indeed,
10 any interest he ever had in the subject property was encumbered by the deed of trust of
11 the subject loan, and has since been extinguished by virtue of a lawful foreclosure sale.
12 Moreover, before one can obtain quiet title to property encumbered by a mortgage loan,
13 he must first pay off the mortgage loan – which was not done here. Finally, quiet title
14 claims lie in equity and it is well established that one who seeks equity must first do
15 equity. By defaulting on the subject loan and failing to cure his default, Plaintiff has
16 failed to do equity and is therefore precluded from seeking equitable relief. For each of
17 the foregoing reasons, Plaintiff's quiet title claim must be dismissed. (*Id.*, pp. 9-10.)

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19 (3) Plaintiff's Deceptive Trade Practices Claim Is Unsustainable

20 As set forth more fully in the Motion for Judgment, Plaintiff's deceptive trade
21 practices claim is unsustainable for the same reasons it was unsustainable in plaintiff's
22 second lawsuit. It is also unsustainable because it is vague and conclusory, and is not
23 asserted with the requisite degree of specificity. Finally, it is unsustainable because it is
24 barred by the applicable statutes of limitations. In short, Plaintiff's deceptive trade
25 practice claim fails for multiple reasons and should be dismissed. (*Id.*, pp. 10-11.)
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2 (4) Plaintiff's Wrongful Foreclosure Claims (Third and
3 Fifth Claims for Relief) Are Unsustainable

4 As set forth more fully in the Motion for Judgment and in the orders dismissing
5 Plaintiff's first and second lawsuit, Plaintiff's wrongful foreclosure claims fails for
6 multiple reasons. For instance, the claims fail because wrongful foreclosure claims are
7 only sustainable where the borrower has satisfied his payment obligations on the loan,
8 something which has not occurred here. The claims also fail because nonjudicial
9 foreclosure was proper under the subject loan documents and pursuant to Nevada law.
10 Finally, the wrongful foreclosure claims fail because none of the allegations undergirding
11 the claims has any merit whatsoever. (*Id.*, pp. 11-16.) For each of the foregoing reasons,
12 Plaintiff's wrongful foreclosure claims should be dismissed.

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14 (5) Plaintiff's Conspiracy Claim Is Unsustainable

15 As set forth more fully in the Motion for Judgment, Plaintiff's conspiracy claim
16 fails for multiple reasons. For instance, Plaintiff cannot establish any unlawful conduct
17 by any of the Defendants or any agreement between Defendants to intentionally engage
18 in misconduct, let alone unlawful conduct for the primary purpose of harming Plaintiff.
19 The conspiracy claim also fails because Plaintiff has not articulated the role of any
20 defendant in the purported conspiracy or pled the claim with the requisite degree of
21 specificity. (*Id.*, pp. 16-18.) In short, Plaintiff's conspiracy claim is unsustainable and
22 should be dismissed.
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24 (6) Plaintiff's Claim for Broken Chain of Custody Claim Is Unsustainable

25 As set forth more fully in the Motion for Judgment, Plaintiff's broken chain of
26 custody claim fails because there is no legally cognizable claim for relief in Nevada for
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2 broken chain of custody. Moreover, contrary to Plaintiff's contention, this Court has
3 repeatedly rejected Plaintiff's "split the note" argument, holding instead that the
4 mortgage follows the note. (*Id.*, pp. 18-19.) Thus, Plaintiff's broken chain of custody
5 claim should be dismissed.

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7 (7) Plaintiff's Claim for Wrongful Filing of Unlawful Detainer is Unsustainable

8 As set forth more fully in the Motion for Judgment, Plaintiff's claim for wrongful
9 filing of unlawful detainer is unsustainable because, among other reasons, there is no
10 legally cognizable claim for relief in Nevada for wrongful filing of unlawful detainer. To
11 the extent Plaintiff believes an unlawful detainer action was wrongfully filed, the proper
12 place for asserting such an argument is within the context of that action, not here.
13 Plaintiff's claim also fails because it appears to be based on the unfounded contention,
14 dispelled *supra* and in the Motion for Judgment, that foreclosure proceedings related to
15 the subject property are unlawful. (*Id.*, p. 19.) For the foregoing reasons, Plaintiff's
16 claim for wrongful filing of unlawful detainer must be dismissed.

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18 (8) Plaintiff's Injunctive Relief Claim Is Unsustainable

19 As set forth more fully in the Motion for Judgment, Plaintiff's injunctive relief
20 claim fails for multiple reasons. First, injunctive relief is merely a remedy, not an
21 independent cause of action. Second, Plaintiff cannot demonstrate a reasonable
22 probability of success on the merits of any of his claims. Third, Plaintiff is precluded
23 from seeking injunctive relief, which lies in equity, because, by defaulting on the subject
24 loan and failing to cure, he has failed to do equity. Fourth, Plaintiff's claim fails because
25 it would be grossly inequitable to preserve the status quo, where Plaintiff benefits from
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2 possession of the subject property for free, to the detriment of Deutsche Bank, who has
3 owned the subject property since February of 2009. Finally, the injunctive relief claim
4 fails because Plaintiff has failed to post any security bond, let alone one that would
5 protect Defendants against a wrongful injunction. (*Id.*, pp. 19-20.)
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7 (9) Plaintiff's Declaratory Relief Claim Is Unsustainable

8 As set forth more fully in the Motion for Judgment, Plaintiff's declaratory relief
9 claim fails for several reasons as well. First, it is well established that declaratory relief is
10 an equitable remedy, not an independent cause of action. Second, Plaintiff's request for
11 declaratory relief against non-party Bank of America is improper. Third, the claim is
12 neither necessary nor proper, as it relates to the same rights and obligations disputed in
13 Plaintiff's other claims for relief. Fourth, the claim fails because it relates to allegations
14 under the Truth in Lending Act which are statutorily barred. Finally, the claim fails
15 because, by defaulting on the subject loan and failing to cure his default, Plaintiff has
16 failed to do equity and is precluded from seeking equitable relief. (*Id.*, pp. 20-22.) For
17 the foregoing reasons, Plaintiff's declaratory relief claim must be dismissed.
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19 (10) Plaintiff's Rescission Claim Is Unsustainable

20 As set forth more fully in the Motion for Judgment, Plaintiff's rescission claim
21 fails for multiple reasons. First, rescission is a remedy, not a claim, and none of
22 Plaintiff's underlying claims for relief has any merit. Second, Plaintiff has not alleged
23 any mutual mistake or any other theory that could justify rescission of the subject loan.
24 Third, rescission is designed to put parties back where they were before entering into an
25 agreement and Plaintiff has not offered, or demonstrated an ability, to repay the funds he
26 obtained by virtue of the subject loan. Fourth, Plaintiff's arguments regarding the
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2 enforceability of the subject loan or the need for rescission have no merit. (*Id.*, p. 22.)

3 For each of the foregoing reasons, Plaintiff's rescission claim must be dismissed.

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5 **III. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE**
6 **PLAINTIFF HAS FAILED TO PRESENT ANY POINTS AND AUTHORITIES**
7 **TO REVIVE ANY OF HIS CLAIMS WHICH WERE UNIFORMLY DISPELLED**
8 **IN THE MOTION FOR JUDGMENT**

9 On March 8, 2011 (three days late), Plaintiff filed an Opposition to Defendants'
10 Motion for Judgment. However, instead of presenting points and authorities in response
11 to the arguments in the Motion for Judgment, Plaintiff's Opposition merely contends, in
12 conclusory fashion, that Plaintiff has asserted viable claims under a notice pleading
13 standard, and that he should be granted leave to amend. Plaintiff's failure to present
14 points and authorities to respond to the arguments in the Motion for Judgment constitutes
15 a consent to granting of the Motion for Judgment. LR 7-2(d).

16 **IV. PLAINTIFF'S REQUEST TO AMEND SHOULD BE DENIED**

17 Plaintiff's request to amend the Complaint should be denied because, among other
18 reasons, the request is futile and unfairly prejudicial to Defendants.

19 While leave to amend generally should be freely granted, futile amendments
20 should not be accommodated.¹ Here, Plaintiff has not explained how an amendment
21 would cure his deficient Complaint. Nor has he attached a copy of a proposed amended
22 complaint in violation of Local Rule 15-1. This is the third complaint that Plaintiff has
23 filed related to the same property and loan. After three opportunities to formulate and
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25 ¹ See, e.g., *Forman v. Davis*, 371 U.S. 178 (1962); *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir.
26 1996) (futile amendments should not be accommodated); *Wisdom v. First Midwest Bank*, 167
27 F.3d 402, 409 (8th Cir. 1999) ("Parties should not be allowed to amend their complaint without
28 showing how the complaint could be amended to save the meritless claim."); *Bailey v. Sullivan*,
885 F.2d 52, 59 (3d Cir. 1989) ("No purpose would be served by allowing [an] amendment to the
complaint to add a challenge which would be dismissed").

1 reformulate his position and claims, Plaintiff still has failed to assert a viable claim for
 2 relief. Permitting an amendment to this Complaint, without any indication of how the
 3 amendment would cure any of Plaintiff's baseless claims, would be an exercise in futility.
 4 Plaintiff's futile request to amend should be denied.
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6 Plaintiff's request should also be denied because the request is unfairly prejudicial
 7 to defendant Deutsche Bank, who has been the lawful owner of the subject property for
 8 more than two years. Plaintiff's request to amend is nothing more than a continuation of
 9 Plaintiff's pattern of intentional delay – to forestall eviction proceedings and prolong his
 10 inequitable rent-free possession of the subject property. *See, e.g., Garrison v.*
 11 *International Paper Co.*, 714 F.2d 757 (8th Cir. 1983) (dismissal with prejudice
 12 appropriate where pattern of intentional delay).
 13

14 In short, Plaintiff's request to amend would be futile and unfairly prejudicial to
 15 Defendants, and it should be denied. Additionally, for these same reasons and the
 16 reasons set forth in the Motion for Judgment, Plaintiff's Complaint should be dismissed
 17 with prejudice.
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19 **V. THE LIS PENDENS SHOULD BE EXPUNGED**

20 In the Motion for Judgment, Defendants set forth the standard for a plaintiff to
 21 maintain a lis pendens on real property. (*See* Motion for Judgment, pp. 24-25.)
 22 Specifically, the plaintiff has the burden of establishing, among other things: (1) that the
 23 action was not brought in bad faith; (2) that he is able to perform any conditions
 24 precedent to the relief sought in the action as it affects the title or possession of the
 25 property; and (3) that he is likely to prevail in the action or has a fair chance of prevailing
 26 and would suffer greater hardship than the defendant if the lis pendens were expunged
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2 and title were transferred. *Id.*; *see also* NRS 14.015. The Motion to Expunge further
3 explained how Plaintiff has not established, and cannot establish, any of these elements.

4 *Id.*

5 Plaintiff's Opposition fails to present any points and authorities in support of
6 maintaining their lis pendens on the subject property. Accordingly, for the reasons set
7 forth herein, and in the Motion to Expunge, and pursuant to LR 7-2(d), Defendants
8 respectfully request that the Court enter an order expunging the lis pendens (Instrument
9 No. 201012130000179) that Plaintiff has wrongfully recorded against the subject
10 property.
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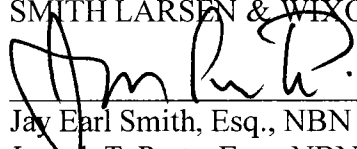
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VI. CONCLUSION

Plaintiff's Complaint fundamentally fails to state a claim upon which relief can be granted. It is also unsustainable because it is a repeat pleading that attempts to relitigate matters that were already considered and rejected by this Court on two separate occasions. Plaintiff's Opposition fails to meaningfully respond to any of the arguments in the Motion for Judgment which uniformly dispel each of his claims for relief. For the reasons set forth herein, and in the Motion for Judgment, and because there are no legally sustainable claims against any of the Defendants, Plaintiff's Complaint should be dismissed with prejudice. Defendants also respectfully request that the lis pendens that was recorded against the subject property be cancelled and expunged from the records of the Clark County, Nevada Recorder.

DATED this 21 day of March, 2011.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2011, a true copy of the
Foregoing **REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE
PLEADINGS AND TO EXPUNGE LIS PENDENS** was filed electronically via the
court's CM/ECF system and served either by mail, postage prepaid, to the following or
electronically as noted:

Charles Anderson
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Plaintiff in pro per
(Served Via U.S. Mail)



an employee of Smith Larsen & Wixom